

226761

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

APR - 6 2010

Part of
Public Record

FINANCE DOCKET NO. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
- ACQUISITION EXEMPTION -
CERTAIN ASSETS OF CSX TRANSPORTATION

**NATIONAL RAILROAD PASSENGER CORPORATION'S
REPLY TO FLORIDA DEPARTMENT OF TRANSPORTATION'S
RESUMPTION REQUEST**

George W. Mayo, Jr.
R. Latane Montague
HOGAN & HARTSON LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Telephone: (202) 637-5600

Jared I. Roberts
Christine E. Lanzon
NATIONAL RAILROAD PASSENGER
CORPORATION
60 Massachusetts Avenue, NE
Washington, DC 20002
Telephone: (202) 906-3812

COUNSEL FOR NATIONAL RAILROAD
PASSENGER CORPORATION

Dated: April 6, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35110

**FLORIDA DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF CSX TRANSPORTATION**

**NATIONAL RAILROAD PASSENGER CORPORATION'S
REPLY TO FLORIDA DEPARTMENT OF TRANSPORTATION'S
RESUMPTION REQUEST**

The National Railroad Passenger Corporation (“Amtrak”) hereby replies to the request submitted by the Florida Department of Transportation (“FDOT”) on March 31, 2010, that this proceeding be resumed; that a procedural schedule be adopted pursuant to which comments on FDOT’s motion to dismiss would be due on April 30, 2010, and FDOT’s reply to comments would be due on May 17, 2010; and that the Brotherhood of Railroad Signalmen (“BRS”) be the sole party permitted to file comments. Amtrak objects to only the third of these requests: Amtrak and any other interested party should be permitted to file comments on April 30.

First, under the procedural schedule originally adopted by the Board, replies to FDOT’s April 3, 2009 motion to dismiss its notice of exemption were due on May 7, 2009. However, on May 1, 2009 the Florida Senate rejected legislation to authorize FDOT to indemnify CSX Transportation (“CSXT”), the owner of the rail line at issue in this proceeding, and then adjourned. This mooted FDOT’s motion; as indicated in FDOT’s April 3 filing, the agreements between FDOT and CSXT made enactment of this legislation a condition precedent to the

transactions at issue, and CSXT publicly stated that it did not intend to extend the June 30, 2009 deadline for sale of the line to FDOT. ^{1/}

Accordingly, on May 7, 2009 FDOT filed a letter with the Board requesting that the proceeding be held in abeyance, referencing the fact that certain "Florida legislation contemplated for the proposed transaction which is the subject of this proceeding was not passed." Having requested abeyance, FDOT stated that "it is unnecessary for the Board and other parties to continue their consideration of the matter presented by FDOT's motion to dismiss."^{2/} Parties which FDOT said need not "continue their consideration of the matter" should not now be foreclosed from submitting replies.

Second, over the year which has passed since the proceeding was suspended, the facts have changed materially. In its resumption request, FDOT itself points to a number of amendments to the agreements related to the transactions which are the subject of this proceeding. With particular respect to Amtrak, the subject transactions raised a range of issues. Amtrak and FDOT had entered into a July 28, 2008 memorandum of understanding (the "MOU") that contemplated a mutually satisfactory resolution of those issues through negotiations. Unfortunately, resolution of the matters set forth in the MOU was not achieved, and Amtrak was left with no choice but to cancel the MOU by letter dated January 21, 2010 (the cancellation being effective 30 days later).

^{1/} See May 2, 2009 article published in The Orlando Sentinel appended hereto.

^{2/} BRS had requested that the date for reply to FDOT's motion to dismiss be extended to May 22, 2009. The Board granted BRS's request in an order served May 7, 2009. In its May 7, 2009 letter to the Board, FDOT stated that its "abeyance request also renders moot the request for extension of time filed on May 5 by the Brotherhood of Railroad Signalmen."

Because it was not able to achieve a negotiated resolution of matters of significant concern to it – matters which bear importantly on the statutory provisions and public interest considerations applicable to the subject transactions – Amtrak will seek Board consideration of these matters in this proceeding. The changed circumstances which have occurred over the past year clearly warrant the Board permitting any and all interested parties – including Amtrak – to file comments addressed to FDOT's motion to dismiss on April 30.

Conclusion

For the reasons set forth above, the Board should permit any interested party to file comments on April 30, 2010 with regard to FDOT's motion to dismiss.

Respectfully submitted,



George W. Mayo, Jr.
R. Latane Montague
HOGAN & HARTSON LLP
555 Thirteenth Street, NW
Washington, DC 20004-1109
Telephone: (202) 637-5600

Jared I. Roberts
Christine E. Lanzon
NATIONAL RAILROAD PASSENGER
CORPORATION
60 Massachusetts Avenue, NE
Washington, DC 20002
Telephone: (202) 906-3812

COUNSEL FOR NATIONAL RAILROAD
PASSENGER CORPORATION

Dated: April 6, 2010

Fla. SunRail perishes with 13,000 jobs

TALLAHASSEE, Fla. -- A last-gasp attempt to approve the SunRail commuter train failed May 1 in the waning moments of the legislative session, possibly marking the end of the \$1.2 billion project that has been five years on the drawing boards. So reports the Orlando Sentinel.

The 16-23 vote on the Senate floor killed the project for this year, leaving its Central Florida supporters disappointed and uncertain about what they would do next.

"It's a sad day for the state of Florida. It sets passenger-rail transportation back decades," said Orlando Mayor Buddy Dyer.

Dyer said he would meet with Central Florida backers and state Department of Transportation officials next week to discuss their options.

U.S. Rep. John Mica, called the vote a "disappointment" and said \$100 million in state and federal funds had already been spent on the project. He had promised more than \$300 million in federal funds for SunRail.

"The loss of this project will kill nearly 13,000 jobs and will send more than one-third of a billion dollars in transportation funding to other states," Mica said in a statement. "I am going to continue to do everything possible to see that that does not happen."

But it's not clear what options remain.

A spokesman for CSX Corp. said Friday that the Jacksonville railroad company -- which had agreed to sell its tracks to the state for SunRail -- will not extend the purchase contract.

"We do not intend to pursue the project beyond expiration of the agreement with FDOT on June 30," said CSX spokesman Gary Sease.

The state would have paid CSX more than \$600 million for 61.5 miles of track -- running between DeLand and Poinciana -- as well as improvements to other parts of the company's system.

(The preceding article was published May 2, 2009, by The Orlando Sentinel.)

CERTIFICATE OF SERVICE

I hereby certify this 6th day of April, 2010, that I have caused the foregoing National Railroad Passenger Corporation's Reply to Florida Department of Transportation's Resumption Request to be served on the parties identified below by the means indicated:

Thomas J. Litwiler, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(By Overnight Delivery)

Richard S. Edelman, Esq.
O'Donnell, Schwartz & Anderson
1300 L Street, N.W.
Washington, DC 20005
(By Hand)



George W. Mayo, Jr.